

PT 97-55

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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CHURCH OF THE COVENANTS	)	
OF LAKE FOREST,	)	Docket Nos: 95-49-028
APPLICANT	)	through
	)	95-49-35
	)	
	)	
v.	)	Real Estate Exemptions
	)	for 1995 Tax Year
	)	
DEPARTMENT OF REVENUE	)	P.I.N.S: 15-36-402-001
STATE OF ILLINOIS	)	through
	)	15-36-402-006
	)	
	)	and
	)	
	)	15-36-400-012
	)	and
	)	15-36-400-015
	)	
	)	
	)	Alan I. Marcus,
	)	Administrative Law Judge

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RECOMMENDATION FOR DISPOSITION

**APPEARANCES:** Mr. Raymond Majewski of Smith & Majeski appeared on behalf of the Church of the Covenants of Lake Forest.

**SYNOPSIS:** These proceedings raise the issue of whether Lake County Parcel Index Numbers 15-36-402-001 through and including 15-36-402-006, as well as Lake County Parcel Index Numbers 15-36-400-012 and 15-36-400-015, (hereinafter collectively referred to as the subject parcels)<sup>1</sup> qualify for exemption from 1995 real estate taxes under 35 ILCS 200/15-40.<sup>2</sup> That provision states as follows:

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1. Each of the first six Parcel Index Numbers begins with the same seven digits, to wit, "15-36-402." The other two parcels begin with "15-36-400." Therefore, in the interest of administrative economy, I shall hereinafter refer

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit, is exempt [from real estate taxation], including such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similiar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious activities shall, as a condition of their employment or association, reside in the facility.

The controversy arises as follows:

On July 10, 1995, the Church of the Covenants of Lake Forest, (hereinafter the "Church" or the "applicant") filed eight separate applications for Property Tax Exemption with the Lake County Board of Review (hereinafter the "Board") (Dept. Group Ex. No. 1). The Board reviewed said complaints but made "no recommendation" to the The Department of Revenue (hereinafter the "Department") about the exempt status of each parcel. (*Id.*).

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to each individual parcel only by the last three digits of its Index Number. Thus, for example, Parcel Index Number 15-36-400-012 shall hereinafter be referred to as "012."

<sup>2</sup>. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*

Based on the above, I expressly reject the suggestion, found on page 4 of applicant's brief, that the governing statute is found in 35 **ILCS** 205/19.2. That provision, which is part of the Revenue Act of 1939, was repealed when the Property Tax Code became effective on January 1, 1994. See, 35 **ILCS** 200/1-1, 35 **ILCS** 200/32-20.

On January 19, 1996, the Department issued eight separate determinations finding that each of the subject parcels were not in exempt use during 1995. (Dept. Group Ex. No. 2). The applicant subsequently filed timely appeals as to all eight parcels (Dept. Group Ex. No. 3) and thereafter presented evidence at a formal administrative hearing that took place on September 10, 1996. Following submission of all evidence and a careful review of the record, it is recommended that only parcels 001 and 012 be exempt from 1995 real estate taxes; and further, that all of the remaining subject parcels not be exempt from same.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein, namely that all of the subject parcels were not in exempt use during 1995, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Group Ex. No. 2.

2. The subject parcels form a large, continuous tract of land that is located at 2590 and 2660 Lake Cook Road in Deerfield, Illinois. The square-shaped tract is configured as follows:

A. Parcel 001 is bordered on the east by parcel 003, on the south by parcel 002 and on the west by parcel 012. It measures 45,355 square feet and contains a garden;

B. Parcel 002 is directly south of parcel 001. It measures 41,797 square feet and contains the residence of applicant's finance director;

C. Parcel 003 is bordered on the west by parcel 001 and on the southeast by parcel 004. It measures 45,715 square feet and contains "scrub land" that the Church leaves in its natural state so that applicant can demonstrate certain Bible teachings that pertain to the state of nature which G-D has provided;

D. Parcel 004 is directly south of parcel 003. It measures 43,300 square feet and contains the residence of applicant's maintenance director;

E. Parcel 005 is directly south of parcel 004. It measures 39,450 square feet and contains an unoccupied home;

F. Parcel 006 is the access road. It measures 24,900 square feet and contains a well house that provides water to other parcels located on the tract;

G. Parcel 012 is bordered on the northeast by parcel 001, the southeast by parcel 002 and the south and northwest by parcel 015. It measures 60,014 square feet, approximately 80% of which is devoted to an open area wherein applicant conducts various outdoor activities.<sup>3</sup> The remaining 20% is occupied by a small (1 story, 440 square foot) garage that applicant uses for overflow storage;

H. Parcel 015 is bordered on the north, east and south by parcel 012. It measures 20,440 square feet and contains the residence of applicant's organist.<sup>4</sup>

Dept. Group Ex. No. 1; Applicant Ex. No. 7; Tr. p(p). 14 - 36, 41 - 52.

3. Applicant acquired its ownership interest in the subject parcels via the following instruments: parcel 001, warrantee deed dated August 26, 1975; parcel 002, warrantee deed dated March 9, 1988; parcel 003, warrantee deed dated August 26, 1975; parcel 004, warrantee deed dated September 2, 1986; parcel 005,

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<sup>3</sup>. For further information about these activities, see, Finding of Fact 13, *supra* at p. 6.

<sup>4</sup>. The entire configuration can also be explained as follows: Heading in an easterly direction, the southwest portion of parcel 005 first intersects the access road identified by parcel number 006 and then continues east to form the tract's southeast boundary; parcel 005 then turns north (left turn) to form the eastern boundary with the easternmost parts of parcels 004 and 003; parcel 003 then turns west (left turn) and (heading in a westerly direction) forms the northern border with the northernmost parts of parcels 001 and 012; parcel 012 then turns south (left turn) and (heading in a southerly direction) forms the western boundary with the western part of parcel 015; parcel 015 then turns east (left turn) and (heading in an easterly direction) forms the tract's southwest border with the southernmost portions of parcels 012 and 002.

The southeast portion of parcel 002 intersects with the access road (parcel 006) and, (making a left turn), continues in a northerly direction along the eastern border of parcel 002 until the road starts to form a culdesac; the culdesac runs in a semi-circle from northeast to southwest; it abuts the southeast border of parcel 001 and threforefrom follows the southeast border of same; the semi-circle then runs northeast through the southernmost portion of parcel 003, after which it curves south (right turn) onto the northwest portion of parcel 004; after the road makes a final curve toward the east, (right turn), it continues straight south and follows the western border of parcel 004; the road then continues south, runs along the western edge of parcel 005 and terminates at the southwest corner thereof.

For a pictorial depiction of the site plan, see, Applicant Ex. No. 7.

quit-claim deed dated February 5, 1977; parcel 006, quit claim deed dated August 29, 1981; parcels 012 and 015, warrantee deed dated September 12, 1989. Applicant Group Ex. No. 6; Tr. p. 13 - 14.

4. Parcel 012 was, for unspecified reasons, subsequently re-deeded to applicant on July 20, 1983. *Id.*

5. Applicant is an Illinois Not For Profit Corporation. It was originally incorporated under the General Not For Profit Act as the "Church of the Covenants of Deerfield, Illinois" in 1947. Applicant Ex. No. 5; Tr. Tr. pp. 8, 12 - 13.

6. Applicant subsequently amended its Articles of Incorporation to reflect the name "Church of the Covenants of Lake Forest, Illinois" on December 30, 1948. Applicant Ex. No. 4; Tr. pp. 8, 12 - 13.

7. The Church received an exemption from Use and related taxes from the Illinois Department of Revenue on April 3, 1992. Applicant Ex. No. 1.

8. Applicant's by-laws provide, *inter alia*, that:

A Its purpose is to establish, maintain and operate a "non-profit Christian Church Home" [sic] for the benefit of its members and their children, for the worship of G-D, for guidance and educational instruction, for promoting and encouraging belief in the Gospel and Doctrines of Jesus Christ, utilizing services and meetings, private and public, together with all methods of communication and publicity, and to acquire, hold or sell real and personal property necessary to the aforesaid purpose;

B. Most of the responsibility for managing the corporation's physical assets shall be vested in a three-member board of directors known as the "Christian Dominion[;]" and,

C. The corporation shall have the following officers: a president and pastor, who is responsible for managing those businesses affairs of the corporation not reserved to the Christian Dominion; a vice-president; a treasurer; an assistant treasurer and a secretary.

Applicant Ex. No. 3.

9. Applicant follows the writings of the Old and New Testaments. It stresses fellowship and emphasizes adherence to the following Commandments:

first, Love the Lord thy G-D with all thy heart, mind and soul; and second, Love thy neighbor as thyself. Tr. pp. 41 - 51.

10. David C. Brueggeman acted as applicant's pastor throughout 1995. His parsonage was adjacent to applicant's principal place of worship, which was (and like all of the foregoing, remains) a church facility located at 350 East Deerpath, Lake Forest, Illinois. Tr. pp. 8 - 9, 52 - 53.<sup>5</sup>

11. The Church had approximately 100 members during 1995. Its church facility was very small but used regularly for Sunday worship services and children's Bible classes. Tr. 8 - 9, 20, 52.

12. Applicant's church facility did not contain enough room for overflow storage or outdoor activities. In order to accommodate these needs, applicant used the garage located on parcel 012 for overflow storage and conducted outdoor activities on other portions of the subject parcels. Tr. pp. 18 - 19, 28.

13. The Church conducted most of its outdoor activities on parcels 001 and 012. It held these activities, which included picnics and other meals, (such as marshmallow, hamburger or hot dog cookouts), prayer sessions, nature outings that tied into various lessons taught in its children's Bible classes, gardening, weeding, harvesting, youth group activities, bonfires, and family outings for church members that include volleyball and other games, at least once every other week. Tr. pp. 18 - 19, 21 - 22, 48 - 50.

14. The youth group events included harvesting the garden and bringing the bounty therefrom to the church facility. Attendance at these events was variable but ranged between 25 to 40. Tr. p. 49.

15. Applicant also conducted approximately 12 outdoor Bible classes during 1995. These classes were held on a weekly basis during the fall and had an average attendance of about 25 people. Tr. pp. 45 - 46.

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<sup>5</sup>. It should be noted that both the church facility and Pastor Brueggeman's parsonage are located off the subject premises. Therefore, neither of these properties are at issue in the present proceedings.

16. The church additionally held three star-gazing outings in 1995. At least one of these outings was conducted in the dead of winter, when cold conditions allowed for clear viewing. The outings featured relevant readings from the Scriptures and had an average attendance of 25 people. Tr. pp. 46 - 48.

17. Some of applicant's members also helped to re-roof the organist's house on one occasion during 1995. On a separate occasion, the members cut down and made logs of an oak tree which the Church intended to use in one of its facilities. Tr. p. 50.

18. The Church also intended to demolish the unoccupied residence located on parcel 005. It did not, however, take any steps toward demolition during 1995. Tr. p. 32.

19. The houses located on parcels 002, 004 and 015 were donated to the Church. While they were not subject to any leases or encumbered by any mortgages during 1995, the houses were nonetheless occupied by persons who paid their own utilities and held full-time jobs. Tr. pp. 17 - 18, 42 - 43.

20. Robert Hoffmeier, the finance director residing in the house located on parcel 002, is a Certified Public Accountant who is engaged in his own private practice. Tr. pp. 26 - 27, 43.

21. Roger Nielson, the maintenance director residing in the house located in parcel 004, is an electrical technician. Tr. pp. 28 - 30, 43.

22. David Hyatt, the organist residing in the house located on parcel 015, is a music teacher in the Gurnee district school system. Tr. pp. 17 - 18, 43.

#### **CONCLUSIONS OF LAW:**

On examination of the record established this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting some but not all of the subject parcels from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that all of said parcels were not in exempt use

during 1995 should be reversed as to parcels 001 and 012 but otherwise affirmed.

In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/19-40, which states as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit, is exempt [from real estate taxation], including such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similiar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for



such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious activities shall, as a condition of their employment or association, reside in the facility.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption and have required such party to prove by clear and conclusive evidence that it falls within the appropriate statutory exemption. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985).

Here, the appropriate exemption pertains to "property used exclusively for religious purposes ...[.]" Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment (which the emphasized language demonstrates is still in effect) eliminated that requirement in cases that do not involve parsonages. The test of exemption then became (and, with the exemption of parsonages, still remains) use and not ownership. People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922). See also, American National Bank and Trust Company v. Department of Revenue, 242 Ill.App.3d 716 (2nd Dist. 1993). For this reason, the subject parcels cannot be exempted under Section 200/15-40 merely because the Church owns them. Therefore, it is necessary to examine the definition of "religious use" in order to

determine whether said parcels are subject to exemption under the applicable statute.

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911), the Illinois Supreme Court considered whether appellee's real estate qualified for religious and educational exemptions from property taxes under amendments to the Revenue Act that became effective July 1, 1909. While the court's analysis of the educational exemption has limited relevance to this proceeding, its definition of the term "religious purpose" provides the basic framework for analyzing taxpayer's claim under Section 200/15-40.

The court began its analysis by noting that "[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of G-D as members of societies and associations." McCullough, *supra* at 136.

Cases decided after McCullough have acknowledged that religious beliefs are not necessarily limited to those which profess an orthodox belief in G-D. See, United States v. Seeger, 380 U.S. 163 (1965). However, the following definition of "religious purpose" contained in McCullough, emphasizes a more traditional approach:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction. McCullough at 136-137.

In applying these criteria to the present case, one must remember that the word "exclusively," when used in Section 200/15-40 and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Thus, evidence

establishing incidental religious uses is legally insufficient to sustain applicant's burden of proof.

Careful review of the proofs submitted herein begins with recognition of the following critical facts: first, that neither applicant's church facility nor Pastor Brueggeman's parsonage are located on the subject parcels; second, that applicant had only one pastor during 1995; third, that applicant's pastor did not reside in the houses located on parcels 002, 004 and 015; fourth, that the persons residing in these houses were not "ministers" within the meaning of Section 200/15-40, but rather, members of the laity who held down other full time employment during 1995; and finally, that the home located on parcel 005 remained vacant throughout the entire 1995 assessment year.

The first four facts establish that the parsonage provisions contained in the second paragraph of Section 200/15-40 do not apply in the present case. Moreover, because applicant's church facility is located in Lake Forest, it would appear that applicant conducts most of its services and other religious programing away from the subject premises. Despite this, the instant record clearly establishes that this facility lacked storage space and that applicant used 20% of parcel 012 for overflow storage during 1995.

Illinois courts have held that storage facilities may be exempted where applicant proves they are "reasonably necessary" to fulfill a need which in turn effectuates an existing exempt use. Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991), (hereinafter "EHC"). (Portion of leasehold used to fulfill applicant's need for management and administrative services held exempt); See also, Memorial Chid Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992), (hereinafter "MCM"). (Appellant's child care center held tax exempt based on finding that subject property was "reasonably necessary" to further the exempt purposes of appellant's exempt affiliate, Memorial Medical Center). MCM at 991 - 993.

Here, the evidence clearly indicates that the garage located on parcel 012 fulfilled applicant's need for overflow storage space. As such, it should be exempted from 1995 real estate taxes under the "reasonably necessary" standard articulated in MCM and EHC. Therefore, the Department's determination pertaining to that 20% of parcel 012 should be reversed.

The "reasonably necessary" standard also serves to exempt the remaining 80% of parcel 012 as well as the entirety of parcel 001. These parcels were the site of continuous and regular outdoor activities, such as picnics and prayer sessions, which applicant could not conduct at its church facility due to lack of space. Based on this consideration, and the evidence establishing that these activities furthered applicant's mission of Christian fellowship, I conclude that the remaining 80% of parcel 012 and 100% of parcel 001 were (under the "reasonably necessary" standard) in exempt use during 1995. Therefore, the Department's determinations as to these portions of the subject parcels should be reversed.

Applicant's evidence as to the remaining parcels fails to establish that any or all portions of same were in exempt use during 1995. With respect to parcel 005, I note that the residence located therein was unoccupied throughout 1995. Consequently, it stands to reason that the parcel which contained this house was not in exempt use under the rationale articulated in Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (hereinafter "AMBC").

In AMBC, the court confronted the issue of whether a property owned by appellant's church could qualify for exemption even though it was boarded up and vacant during the years in question. The court held in the negative. In doing so, it relied on Skil Corporation v. Korzen, 32 Ill.2d 249 (1965) for the proposition that evidence of intended use is not equivalent to, and therefore legally insufficient to sustain applicant's burden of establishing, actual exempt use. See also Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

Here, the testimony of applicant's only witness, Earl Hucker, establishes that applicant intended to demolish the unoccupied home during 1995. (Tr. p. 32). However, the record is devoid of any evidence establishing that applicant actually effectuated this intent during 1995. Absent such evidence, I must conclude that parcel 005 was primarily vacant throughout that entire assessment year. Consequently, the principles enunciated in AMBC establish that this parcel was not "used exclusively for religious purposes ..." in 1995.

A similiar rationale applies to parcel 003. Mr. Hucker testified that applicant left this "scrub land" in its natural state so that it could illustrate certain Bible teachings about the state of nature which G-D has provided. (Tr. pp. 23, 44). While I do not doubt the religious validity of these teachings or the applicant's sincere adherence thereto, the photograph submitted as Applicant Ex. No. 12 depicts an unkept area that contains a lot of dead grass and quite a few bare trees.

These characteristics appear to be more consistent with vacancy than active use. Thus, although our courts have held that "if property is devoted, in a primary sense, to a religious purpose, the fact that it is incidentally used for secular purposes will not destroy the exemption," (McKenzie v. Johnson, 98 Ill.2d 89, 98 (1983), quoting First Congregational Church v. Board of Review, 254 Ill. 220 (1912)), the aforementioned photograph raises doubts as to whether parcel 003 was "exclusively used for religious purposes ..." during 1995. Given that the above-cited rules mandate that such doubts be resolved in favor of taxation,<sup>6</sup> I conclude that any religious uses were incidental to the parcel's primarily vacant condition, which, per AMBC, does not constitute an exempt use. For this and all the foregoing reasons, the Department's determinations as to parcels 003 and 005 should be affirmed.

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<sup>6</sup> See, *supra*. at pp. 9 - 10.

The residences located on parcels 002, 004 and 015 do not qualify for exemption under Section 200/15-40 for several reasons. First, as noted above, the persons who occupied these residences were not "ministers[,]" but instead, members of the laity whose full-time, secular employment had little, if any, nexus to the Church. Accordingly, neither the parsonage provisions nor any other part of Section 200/15-40 provides guidelines for determining the exempt status of the houses situated on these parcels.

Despite the above, our courts have rendered a line of decisions holding that the residences of domestic employees, maintenance personnel and the like are not subject to exemption unless one of two conditions is met: first, that the resident-employee performs an exempt function, such as educational or religious duties, and is required by those same exempt duties to live in the residence; or, second, that the resident-employee performs his duties in furtherance of the institution's exempt purpose in the building. McKenzie v. Johnson, *supra* at 99; Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987); Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d 1082 (2nd Dist. 1988); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill. App.3d 858 (1989).

Here, applicant's organist, finance director and grounds keeper all hold full-time, secular jobs which, by their very descriptions, appear to have no connection with applicant's church facility. Given this consideration, it seems that these persons do not perform any exempt functions while residing in their homes, save for those that are incidental to the duties of their non-exempt, full time employment. Consequently, I conclude that such incidental duties neither require these persons to live in their residences nor perform any exempt functions in a church building located well away from the subject parcels. For this and all the above-stated reasons, those portions of the Department's determinations pertaining to parcels 002, 004 and 015 should be affirmed.

The preceding analysis does not address the exempt status of the access road and water well located on parcel 006. One might argue that the access road should be exempted because it is "reasonably necessary" to effectuate the exempt outdoor activities which take place on parcels 001 and 012. While it is true that this road provides access to all of the subject parcels, the foregoing analysis has demonstrated that not all of same were in exempt use during 1995. Therefore, if I view the access road as an indivisible whole, the conclusion that it does not facilitate exempt activity seems inescapable.

In Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971), (hereinafter "IIT"), the Illinois Supreme court reaffirmed the well-settled principle that "[w]here a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation." *Id.* at 64.

This holding applies in cases where a specifically identifiable exempt use or uses can be ascribed to a specifically identifiable portion or portions of the parcel under consideration. In the present case, I am unable to identify which (if any) specific portion or portions of parcel 006 are used to service the parcels which I have previously found to be exempt. Absent such identification, I must conclude that the road portion of parcel 006 fails to qualify for partial exemption under the principle enunciated in IIT because only two of the seven parcels that it services are in exempt use.<sup>7</sup>

The water well is likewise not exempt. Mr. Hucker's testimony establishes that this portion of parcel 006 supplies water to the houses located on 002, 004 and 015. (Tr. pp. 35 - 36). None of these houses satisfy the common law requirements for exempt use.<sup>8</sup> Furthermore, Mr. Hucker's somewhat contradictory testimony as to storage establishes (at best) non-exempt intended or incidental

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<sup>7</sup>. This same rationale also divests the entire roadway of exempt status under the "reasonably necessary" standard. See, *infra.* at p. 15.

<sup>8</sup>. See, *infra.* at p. 14.

uses.<sup>9</sup> Hence, applicant's use of the water well neither satisfies the "reasonably necessary" test nor any of the other statutory or common law requirements for exemption. Therefore, for all the foregoing reasons, the Department's determination as to the entirety parcel 006 should be affirmed.

Applicant attempts to rebut the foregoing analysis, and thereby exempt all of the subject parcels, by relying on Illinois Conference of the United Church of Christ v. Department of Revenue, 165 Ill. App.3d 200 (3rd Dist. 1988), (hereinafter "United Church"). There, the court held in favor of exempting a

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<sup>9</sup>. This testimony, found at Tr. pp. 34 - 35, is as follows:

Q. (By applicant's counsel) Now, is this road the main access to all the other parcels?

A. That is correct.

Q. And the equipment that's housed in the shed[,] whose equipment is that?

A. That is the church's equipment.

Q. Is it used for any other purpose?

A. No.

Q. (By the ALJ) You said it was a well house but you also [said it was used] for storage?

A. No. This one is not used for storage. We do have some storage in -- I told you this garage is going to come down, it will come down.

Q. (By applicant's attorney) So this well house itself is not used for storage?

A. I don't know if there any right now. [sic]. It has been --

Q. (By the ALJ) In 1995?

A. In '95 what we did we installed games. [sic] There's some storage there. So if there's any of the games that are out in these other areas instead of bringing them back to the other cites we put them in the well house.



large tract of land wherein appellant conducted an outdoor ministry. However, unlike the present case, the United Church appellant conducted *all* of its operations, including spiritual meditations and vesper services, on the parcels at issue.

This applicant conducts most of its worship services, Sunday and otherwise, at a church facility that is not located on the subject parcels. Thus, this case is factually distinguishable from United Church in that applicant's primary base of religious operations is separately located from the parcels it is currently seeking to exempt. For this reason, the exempt status of these same parcels is determined according to the "reasonably necessary" and residential standards articulated above rather than the actual use test employed in United Church. To the extent that application of these standards herein has demonstrated that *some but not all* of the subject parcels were "exclusively used for religious purposes ..." during 1995, I conclude that applicant's reliance on United Church is misplaced.

In summary, this record establishes that only parcels 001 and 012 were used for exempt purposes, (to wit, storage and regular outdoor activities that were "reasonably necessary" to effectuate the fellowship purposes which constitute a central component of the applicant's religious beliefs), during 1995. Therefore, the Department's determinations as to the entirety of these parcels should be reversed. However, the evidence as to parcels 001, 003, 004, 005, 006 and 015 fails to demonstrate that these properties satisfy the "reasonably necessary" or other applicable standards for exempt use. Consequently, the Department's determinations as to same should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Lake County Parcel Index Numbers 15-36-402-002 and 15-36-400-012 be exempt from 1995 real estate taxes. It is also my recommendation that Lake County Parcel Index Numbers 15-36-402-001, 15-36-402-003, 15-36-402-004, 15-36-402-005, 15-36-402-006 and 15-36-400-015 not be exempt from same.

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Date

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Alan I. Marcus,  
Administrative Law Judge